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DECISION



W. W. [unclear]
Proc. I

**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-190026

DATE: November 30, 1977

MATTER OF: Dynamic's International

DIGEST:

Protester's late bid was properly rejected by agency notwithstanding mailing by "express mail" allegedly guarantees timely delivery, in absence of showing that bid met conditions for consideration of late bids contained in IFB.

Dynamic's International (D.I.) protests the rejection of its bids under surplus property sales Nos. 27-7282 and 27-7307, issued by the Defense Property Disposal Service (DPDS), Battle Creek, Michigan. In both instances, D.I.'s bid failed to reach the designated location, the Defense Property Disposal Region Office (DPDR), Columbus, Ohio, by the time set for bid opening, and was rejected as late.

In each case, D.I. mailed its bid by "express mail," which it claims guarantees delivery of such mail to principal cities of the United States within 12 hours of deposit. D.I. does not dispute the fact that its bids were delivered at DPDR after the time set for bid opening, but rather argues that DPDR and the United States Postal Service (Postal Service) were at fault and, therefore, its bids should not have been considered late.

D.I. contends, generally, that DPDR's current procedures constitute mishandling of bids for these reasons: (1) DPDR does not have messengers pick up express mail at the main post office in Columbus, (2) DPDR insists that all bids go to the nearest post office substation, and (3) all of the current invitations for bids (IFB) do not list DPDR's telegraph address for receiving bid changes and modifications.

Regarding sale No. 27-7282, specifically, D.I. asserts that a telegram modifying its bid and a telephone call, both received by DPDR prior to bid opening time, should have alerted DPDR to send someone to the post office to check on the express mail. D.I. also argues that since DPDR could not make award

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until some time after bid opening due to the necessity for an analysis of bids, its bid could have been considered even though it was received after bid opening.

D.I. argues that the Postal Service was also at fault for failing to deliver its bid within the 12 hour time guaranteed.

It is our view that D.I.'s bids were properly rejected by DPDR. While it may well be that delivery should have been made prior to the deadlines for receipt of bids, nevertheless, the bids were not received until after bid opening. The fact that D.I.'s bids were sent by "express mail," or that delivery in such manner is guaranteed, did not remove from D.I. its obligation to assure timely arrival of its bids. Our Office has consistently held that the bidder has the responsibility to assure timely arrival of its bid for a scheduled bid opening and must bear the responsibility of the late arrival of a bid or a modification. Late receipt of a bid will result in its rejection unless the specific conditions set forth in the IFB are met. B.E. Wilson Contracting Corp., 55 Comp. Gen. 220 (1975), 75-2 CPD 145, and cases cited therein; D.M. Anderson Co., B-186907, August 3, 1976, 76-2 CPD 123.

The late bid clause, part 3, article C of the Sale By Reference pamphlet, which was incorporated by reference into the IFB's, provides that a bid that is not received by the contracting officer prior to bid opening may only be considered if: (1) it was mailed and in fact delivered to the proper address by bid opening, (2) it was received by the contracting officer prior to award, and (3) it would have been timely but for mishandling by personnel of the sales office or their designees. Additionally, we have held that mishandling by a Government agency refers to mishandling after receipt of the bid in the agency's local office, not after receipt at the post office serving that agency. The Hoedads, B-185919, July 8, 1976, 76-2 CPD 21.

Since D.I.'s bids did not meet the conditions set forth in the IFB's, allowing consideration of late bids, it was properly rejected. Also, we cannot agree that the failure of DPDR to establish a routine procedure for picking up express mail or its

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actions in connection with sale No. 27-7282 constitute mishandling of bids.

Accordingly, the protest is denied.


Deputy Comptroller General
of the United States